



A PHI Company

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October 6, 2015

FILED VIA DELAFILE
AND VIA ELECTRONIC MAIL
Delaware Public Service Commission
Attn.: Ms. Donna Nickerson
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, DE 19904

Re: David L. Benfer v. Delmarva Power & Light Company
PSC Docket No. 15-1380

Dear Ms. Nickerson:

Enclosed please find Delmarva Power & Light Company's Answer and Motion to Dismiss the Complaint filed in the above-captioned matter.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Pamela J. Scott", written over a blue circular stamp.

Pamela J. Scott

Enclosures

cc: Ms. Judy Rogozinski (w/enclosures)
Ms. Maureen Coyne-Greto (w/enclosures)
Mr. David L. Benfer (w/enclosures)

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE FORMAL)	
COMPLAINT OF DAVID L. BENFER)	Complaint
AGAINST DELMARVA POWER &)	Docket No. 15-1380
LIGHT COMPANY REGARDING A)	
RESTORATION DISPUTE)	
(FILED SEPTEMBER 8, 2015))	

ANSWER AND MOTION TO DISMISS

Delmarva Power & Light Company (Delmarva), by and through its undersigned counsel, hereby responds to the complaint filed by David L. Benfer (hereinafter referred to as "Petitioner"), and moves that this complaint be dismissed with prejudice, as follows.

1. Denied that Delmarva or Brandywine Construction Company ("BCCI") caused the depression of four sections of pavement on Petitioner's property.
2. Delmarva is without sufficient knowledge or information to admit or deny the allegations pertaining to statements made to Petitioner by BCCI concerning the cause of the depression in the pavement.
3. Denied that the pictures provided by Petitioner support his claim.
4. Delmarva is without sufficient knowledge or information to admit or deny the allegations that during last Winter Petitioner "witnessed the sidewalk sink to its present level".

MOTION TO DISMISS

5. Delmarva repeats and realleges the responses set forth in Paragraphs 1 through

4 as if fully set forth herein and repeats and realleges the basis for its previously filed Motion to Dismiss and moves that this complaint be dismissed for the reasons set forth herein.

6. The Delaware Public Service Commission (“Commission”) has exclusive original jurisdiction to supervise and regulate public utilities pursuant to the provisions of 26 *Del. C* §201(a). While Delmarva is a public utility regulated by the Commission, the Commission has no regulatory authority over BCCI, or over the work being performed by BCCI on behalf of Delmarva, unless there is an allegation that service to the customer has been impacted, Delmarva’s rates are implicated or a provision of Delmarva’s Gas Tariff (“Tariff”) has been violated.

7. Petitioner makes no claim that Delmarva has failed to provide safe and adequate service, that there is an issue regarding the rates charged for gas service or that Delmarva has violated any provisions of its Tariff. Rather, Petitioner’s claim is that there was damage to his property as a result of construction work performed by BCCI on behalf of Delmarva. Under these circumstances, the Commission does not have jurisdiction over a property damage claim between Petitioner and Delmarva and/or Delmarva’s contractor.

8. The work that was performed in the area of Petitioner’s property was work performed within a Delmarva gas line easement. While, generally speaking, Delmarva has authority under its Tariff, Leaf 22, Section XIII. A., to access its equipment, the work that was performed that allegedly impacted Petitioner’s property was work performed pursuant to the terms of a private easement agreement. Consistent with the reasoning of the Commission in *McHugh v. Tidewater Utilities, Inc.*, 2002 WL 31399462 (*Del. P.S.C.*), where the Commission determined that it did not have jurisdiction over a contractual dispute between an unregulated entity and a utility customer, the Commission does not have authority over the manner in which Delmarva performs construction work through a third party contractor pursuant to the terms of an easement agreement. The easement agreement is

a private agreement between Delmarva and the property owner who granted the easement.

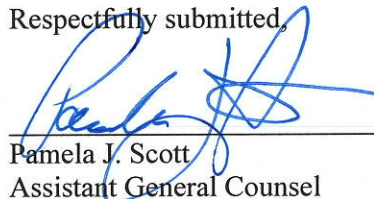
9. Unlike the situation in *Artestian Water Co. v. Cynwyd Club Apartments, Inc.*, 297 A. 2d 387 (Del. 1972), there is no issue here, such as quality of service standards, that would invoke the jurisdiction of the Commission.

10. The Commission does not sit as a court of law¹ and, therefore, cannot arbitrate property damage claims which are within the province of the courts.

11. Pursuant to an easement granted to Delmarva, Delmarva has the right and authority to repair and replace its gas facilities. The Commission has no jurisdiction over such matters; therefore, Petitioner's complaint should be dismissed for lack of jurisdiction and failure to state a claim upon which relief can be granted.

WHEREFORE, Delmarva respectfully requests that the Petitioner's complaint be dismissed, with prejudice.

Respectfully submitted,



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Dated: October 6, 2015

¹ *Artestian Water Co. v. Cynwyd Club Apartments, Inc.*, 297 A. 2d 387 (Del. 1972)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing were served upon the following on October 6, 2015 via the manner set forth below:

**VIA ELECTRONIC MAIL AND
FILED VIA DELAFILE**

Donna Nickerson
Secretary
Delaware Public Service Commission
861 Silver Lake Boulevard, Suite 100
Dover, DE 19904
Email: donna.nickerson@state.de.us

**VIA ELECTRONIC MAIL AND
FILED VIA DELAFILE**

Julie Donoghue
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**VIA ELECTRONIC MAIL
AND OVERNIGHT DELIVERY**

Mr. David L. Benfer
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**VIA ELECTRONIC MAIL AND
FILED VIA DELAFILE**

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